

22.06.2026

Item no. DL20
Court No. 16

Asraf, A.R.(Ct.)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Case No.

FMAT 35 of 2026

with

CAN 1 of 2026

CAN 2 of 2026

In the matter of :

SITARAM SELAMPURIA & ANR.

...Appellants

VS.

SAMAR KUMAR KUNDU

...Respondent

For the Appellants :

Mr. Debanik Banerjee

Ms. Huzaifa Shahid

...Advocates

For the Respondent :

Mr. Samiran Mandal

Mr. Nitish Samanta

Mr. S. Mitra

...Advocates

In Re : I. A. No. CAN 1 of 2026

1. Affidavit of service filed today be kept on record.
2. The delay occasioned in preferring the appeal, of about 224 days, is due to the appellant no.1 suffering from prostate issues which were found to be cancerous, for which he had to undergo an emergency surgery on December 10, 2025. In the interregnum, the appellant no.2, being his younger brother, had to shoulder the burden of the family. Upon recovery of the appellant no.1, he visited the chambers of the present advocate-on-record along

with appellant no.2 on January 7, 2026. Thereafter the appeal was prepared and filed.

3. Learned counsel appearing for the respondent submits that there are other two brothers of the appellants as well who could have looked after the litigation during the interregnum. However, we find from the records that only the present appellants/brothers are litigating in the present *lis* and as such the fact that there are other brothers in the family does not have any germane bearing insofar as the condonation application is concerned.
4. On a composite reading of the application and hearing learned counsel for the parties, we find sufficient reason for the delay to have been furnished.
5. Accordingly, CAN 1 of 2026 is allowed on contest, thereby condoning the delay in preferring FMAT 35 of 2026.

In re : FMAT 35 of 2026

6. The appeal arises out of a suit for specific performance of an agreement.
7. The present challenge has been preferred against an order whereby temporary injunction has been granted in respect of the subject property covered

by the said unregistered and insufficiently-stamped agreement for sale, on which the plaintiff/respondent relied upon in the Trial Court.

8. Learned counsel for the appellants argues that at the ad interim stage, an ex parte ad interim order of injunction was reversed in appeal by a coordinate Bench of this Court on the premise that an unregistered and unstamped document cannot be relied on to grant injunction. Learned counsel relies on *M/s. N. N. Global Mercantile Private Limited Vs. M/s. Indo Unique Flame Ltd. & Ors.* reported at (2023) 7 SCC 1 in support of such proposition, which was apparently relied on by the coordinate Bench as well. It is further argued that the impugned order is devoid of proper reasons, which also vitiates the said order.

9. Insofar as the first argument is concerned, there are several facets which are required to be considered. First, the findings arrived at by a Court at the ad interim stage are not binding at the final hearing of the injunction application. Secondly, the judgment of *M/s. N. N. Global Mercantile Private Limited (supra)* has subsequently been impliedly overruled in principle by a Larger Bench of the Hon'ble Supreme Court, thereby holding that the bar of

insufficiency of stamp as contemplated in Section 35 of the Indian Stamp Act, 1899 is not an absolute bar and is curable.

10. In fact, the bar under Section 35 is waivable if an objection as to the sufficiency of stamp is not taken at the stage of admission of the document in evidence, which can only be construed to be the stage when the document is tendered in evidence.
11. If a bar is waivable, it is implicit that the said bar cannot be construed to be absolute.
12. In fact, an insufficiently stamped document can always be directed by the Trial Court to be impounded.
13. Insofar as the lack of registration of the document, on the strength of which the suit for specific performance has been filed and the impugned order of injunction has been granted, is concerned, the proviso to Section 49 of the Registration Act, 1908 specifically stipulates that the non-registration of an agreement for sale is not a bar in a suit for specific performance of such agreement. Since the present suit is one for specific performance, the non-registration of the document accordingly cannot be construed to be a bar to grant injunction.

14. Inasmuch as the alleged lack of proper reasons is concerned, we find from the impugned order that the learned Trial Judge has adverted to the respective arguments of the parties and has come to the conclusion that since an agreement has been produced prima facie by the plaintiff/respondent, the subject property is required to be protected during pendency of the suit. It is well-settled that at the stage of injunction, a mini trial would not be held by the Trial Court. Hence, the mere insufficiency of the reasons cannot be construed to be lack of reasons altogether which would vitiate the impugned order. In such view of the matter, we do not find any illegality in the impugned order.

15. Accordingly, FMAT 35 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure, 1908.

16. Consequentially, CAN 2 of 2026 is also dismissed.

17. There will be no order as to costs.

18. However, the learned Trial Judge is directed to impound the agreement on the basis of which the suit has been filed, before proceeding further with the hearing of the suit, in the event the Trial Court is of the prima facie opinion that the same is insufficiently stamped.

19. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)